

DOCKET FILE COPY ORIGINAL

RECEIVED

FEB 20 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the) CC Docket No. 96-149
Communications Act of 1934, as amended)
)

**PETITION FOR CLARIFICATION OR PARTIAL RECONSIDERATION BY
THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to Section 1.429 of the Commission's rules, the Association for Local Telecommunications Services ("ALTS") hereby petitions for clarification or partial reconsideration of the Commission's proposed non-accounting safeguards issued under Sections 271 and 272 of the Communications Act of 1934 in the First Report and Order and FNPRM ("First Non-Accounting Safeguard R&O"), CC Docket No. 19-149, FCC 96-489, released December 24, 1996.¹

I. THE COMMISSION NEEDS TO INSURE THAT RBOCS DO NOT PROVIDE IN-REGION LONG DISTANCE INFORMATION SERVICES WITHOUT FIRST OBTAINING SECTION 271 PERMISSION, AND ALSO COMPLYING WITH THE FIRST NON-ACCOUNTING SAFEGUARD R&O.

The Commission was clearly correct in concluding that interLATA information services provided by the Regional Bell Operating Companies ("RBOCs") are fully governed by Section 272 (First Non-Accounting Safeguard R&O at ¶ 55), and that

¹ ALTS is the non-profit national trade organization representing competitive providers of local telecommunications services. ALTS's membership includes over thirty facilities-based providers of competitive access and local exchange services.

such services included bundled interLATA telcom services (id. at ¶ 115).

In particular, ALTS agrees with and wholeheartedly supports the First Non-Accounting Safeguard R&O's conclusion that (at ¶ 121): "BOCs may not provide interLATA services in their own regions, either over their own facilities or through resale, before receiving authorization from the Commission under section 271(d). Therefore, we conclude that BOCs may not provide interLATA information services, except for information services covered by section 271(g)(4), in any of their in-region states prior to obtaining section 271 authorization;" (emphasis supplied).²

Unfortunately, the rules attached to the First Non-Accounting Safeguard R&O fail to incorporate this very fundamental point. While ALTS believes there can be no possible confusion about this requirement, its absence from the regulations will likely be seized upon an excuse for non-compliance, and result in yet further litigation.

² See also ¶ 127: "If a BOC's provision of an Internet or Internet access service (or, for that matter, any information service) incorporates a bundled, in-region, interLATA transmission component provided by the BOC over its own facilities or through resale, that service may only be provided through a section 272 affiliate, after the BOC has received in-region interLATA authority under section 271" (emphasis supplied); and ¶ 121, n. 276: "We note that even when an information service and interLATA transmission service are ostensibly separately priced, if the BOC offers special discounts or incentives to customers that take both services, this would constitute sufficient evidence of bundling to render the information service an interLATA information service."

The potential for BOC defiance is clear from n. 802, where the Ohio and Michigan commissions indicate they have: "already received requests from BOC 272 affiliates" Obviously, there is no such thing as a Section 272 affiliate until the present First Non-Accounting Safeguard R&O becomes effective, and the BOCs start complying with its requirements.

Indeed, while the Commission's desire to minimize the detail in its rules is laudable, it may be creating more trouble in the long run by fostering RBOC evasions. Important matters like the right of CLECs to collate wherever they choose as ISPs if the RBOC Section 272 subsidiary collocates as an ISP (at ¶ 221), the inclusion of telemessaging services as information services (at ¶ 145), the right of CLECs to bid on any RBOC ownership transfers (at ¶ 218, 266), the detailed pricing rules of ¶¶ 256-257, the burden of proof imposed on RBOCs in the complaint process (at ¶ 345), should each be clearly spelled out in the Commission's rules.

In particular, Section 53.201 should be modified to read as follows:

"(b) New in-region InterLATA information services. After February 8, 1996, a BOC shall provide all in-region interLATA information services only through a section 272 affiliate and only in those states where the BOC has satisfied the requirements of section 271.

(c) New out-of-region interLATA information services.

After February 8, 1996, a BOC shall provide all out-of-region interLATA information services only through a section 277 affiliate.

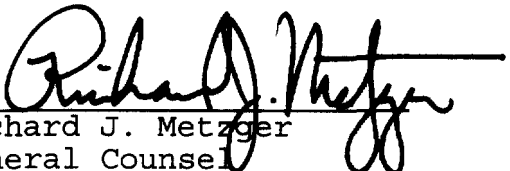
(d) New manufacturing activities. After February 8, 1996, a BOC shall engage in manufacturing activities only through a section 272 affiliate."

Clarification of its rules on these very important points will save the Commission much effort in the future.

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission clarify or else reconsider its proposed non-accounting safeguards under Section 272 by conforming its regulations to the details of its First Non-Accounting Safeguard R&O.

Respectfully submitted,

By: 
Richard J. Metzger
General Counsel
Association for Local
Telecommunications Services
1200 19th Street, N.W.
Suite 560
Washington, D.C. 20036
(202) 466-3046

February 20, 1997

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Reconsideration by the Association for Local Telecommunications Services was served February 20, 1997, on the following persons by First-Class Mail or by hand service, as indicated.


M. Louise Banzon

Regina Keeney *

Chief, Common Carrier Bureau
FCC, Room 500
1919 M St., N.W.
Washington, D.C. 20554

James D. Schlichting *

Chief, Competitive Pricing
Division
FCC, Room 518
1919 M Street, N.W. 20554

Richard Welch *

Chief, Policy and Program
Planning
FCC, Room 544
1919 M St., N.W.
Washington, D.C. 20554

ITS Inc. *

2100 M Street, N.W.
Suite 140
Washington, D.C. 20037

Linda G. Morrison
Antoinette Cook Bush
Skadden, Arps, Slate,
Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

Joseph Di Bella
Attorney for NYNEX
1300 I Street, NW
Suite 400 West
Washington, DC 20005

Attorneys for Ameritech

Robert B. McKenna
Kathryn Marie Krause
Attorneys for US WEST, Inc.
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

M. Robert Sutherland
Richard M. Sbaratta
A. Kirven Gilbert III
BellSouth Corporation
1155 Peachtree St., NE
Suite 1700
Atlanta, GA 30309-3610

Lydia Pulley
James G. Pachulski
Attorneys for Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

MARGARET E. GARBER
Pacific Telesis Group
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Robert M. Lynch
Durward D. Dupre
Mary W. Marks
Thomas A. Pajda
One Bell Center, Room 3520
St. Louis, MO 63101

* HAND SERVICE